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January 23, 2006

**Via E-File**

Honorable Patti B. Saris  
United States District Court  
District of Massachusetts  
One Courthouse Way, Courtroom 13  
Boston, MA 02210

Re: In re Pharmaceutical Industry Average Wholesale Price Litigation –  
MDL 1456

Dear Judge Saris:

We are enclosing proposed orders to clean up the class certification order in light of the January 19, 2006 hearing.

There are two orders. Version 1 proposes a multi-state Class 2. In their written opposition defendants raised no issues with respect to the groupings, but at the argument asserted that certain states should not be included, namely Rhode Island, Michigan and Texas. We have removed Rhode Island and modified Texas to keep in the Class those TPPs with less than \$25 million in assets (as the statute requires). With respect to Michigan, defendants' proposed exclusion is incorrect. Mich. Stat. § 445.911(3) authorizes class actions brought by "persons," which specifically includes corporations per Mich. Stat. § 445.902(c). *See also F.T.C. v. Mylan Labs., Inc.*, 62 F. Supp. 2d 25, 55-57 (D.D.C. 1999) (applying Michigan law) (State Medicaid programs, wholesalers, retail pharmacy chains and other customers were "consumers" with standing to bring suit against generic drug manufacturer for sales of prescription drugs). Otherwise, we believe the order tracks your August 16, 2005 groupings.

Version 2 is the same as Version 1 except that it has Class 2 as a Massachusetts class only.

Each version lists the proposed Class 1 and Class 2 representatives as identified at the hearing. Where a Class 1 representative was relatively "healthy," i.e., Mr. Townsend, we did not add a spouse as a joint representative. We did, however, have to make a

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change to Mr. Howe's status as he has, sadly, passed away since his deposition. His spouse remains committed to the prosecution of the case.

Both orders also make changes that were discussed by the Court (*e.g.*, including those in the class with an enforceable obligation in Class 1 and Class 3).

Respectfully,

HAGENS BERMAN SOBOL SHAPIRO LLP



Steve W. Berman

SWB:dld  
cc: All Counsel (via LexisNexis File & Serve)

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE LITIGATION) MDL No. 1456  
)  
)  
THIS DOCUMENT RELATES TO ALL ) CIVIL ACTION: 01-CV-12257-PBS  
CLASS ACTIONS )  
01-CV-12257-PBS AND 01-CV-339 )  
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**[MODIFIED AND PROPOSED VERSION 1]**  
**CONSOLIDATED ORDER RE: MOTION FOR CLASS CERTIFICATION**

\_\_\_\_\_, 2006

Saris, U.S.D.J.

Plaintiffs have moved, pursuant to Fed. R. Civ. P. 23, for an order certifying a class in this action. Having considered the submissions of the parties and the record in this case, IT IS HEREBY ORDERED that plaintiffs' motion for class certification is GRANTED IN PART and DENIED IN PART as to the claims asserted in the Third Amended Master Consolidated Class Action Complaint ("TAMCAC"), as follows:

**I. CLASSES AND SUBCLASSES CERTIFIED**

The Court certifies the following Classes:

**1. Class 1: Medicare Part B Co-Pay Class.**

**a. Class Definition:**

All natural persons who made a co-payment, or who have incurred a currently enforceable obligation to make a co-payment, for a Medicare Part B covered Subject Drug<sup>1</sup> that was manufactured by AstraZeneca, the BMS Group,

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<sup>1</sup> The Subject Drugs are identified in the Table of Subject Drugs found at the end of this Order.

the GSK Group, or the Johnson & Johnson Group.<sup>2</sup> Excluded from the Class are those who made flat co-pays; and the residents of the states of Alabama, Georgia, Iowa, Louisiana, Mississippi and Montana (where consumer protection statutes do not permit class actions).

b. The Court certifies four Subclasses corresponding to each of the defendant groups

c. The Court also certifies the following plaintiffs as Class 1 Representatives of these Subclasses: Leroy Townsend (Astra); Reverend David and Susan Ruth Aaronson (BMS); Joyce Howe individually and on behalf of the Estate of Robert Howe (Astra, GSK); James and Teresa Shepley (J&J, Astra); and Larry Young individually and on behalf of the Estate of Patricia Young (BMS, J&J). Consistent with the Court's February 24, 2004, Memorandum and Order, the Representative of a Subclass need only have paid or reimbursed for one of the Subject Drugs manufactured or marketed by a defendant group.

d. The consumer protection laws of each state shall apply to these Subclasses. Specifically, the Medicare Co-pay Class is certified for claims that include the following statutes: (a) Alaska Stat. Code § 40.50.471, *et seq.*; (b) Ariz. Rev. Stat. § 44-1522, *et seq.*; (c) Ark. Code § 4-88-101, *et seq.*; (d) Cal. Bus. & Prof. Code §§ 17200, *et seq.*, 1770; (e) Colo. Rev. Stat. § 6-1-105, *et seq.*; (f) Conn. Gen. Stat. § 42-110b, *et seq.*; (g) 6 Del. Code § 2511, *et seq.*; (h) D.C. Code § 28-3901, *et seq.*; (i) Fla. Stat. § 501.201, *et seq.*; (j) Haw. Rev. Stat. § 480, *et seq.*; (k) Idaho Code § 48-601, *et seq.*; (l) 815 ILCS § 505/1, *et seq.*; (m) Ind. Code Ann. § 24-5-0.5.1, *et seq.*; (n) Kan. Stat. § 50-623, *et seq.*; (o) Md. Com. Law Code § 13-101, *et seq.*; (p) Mass. Gen. L. Ch. 93A, *et seq.*; (q) Mich. Stat. § 445.901, *et seq.*; (r) Minn. Stat. § 325F.67, *et seq.*; (s) Mo. Rev. Stat. § 407.010, *et seq.*; (t) Neb. Rev. Stat. § 59-1601, *et seq.*; (u) Nev. Rev. Stat. § 598.0903, *et*

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<sup>2</sup> These "groups" are defined in the TAMCAC.

*seq.*; (v) N.H. Rev. Stat. § 358-A:1, *et seq.*; (w) N.J. Stat. Ann. § 56:8-1, *et seq.*; (x) N.M. Stat. Ann. § 57-12-1, *et seq.*; (y) N.Y. Gen. Bus. Law § 349, *et seq.*; (z) N.C. Gen. Stat. § 75-1.1, *et seq.*; (aa) N.D. Cent. Code § 51-15-01, *et seq.*; (bb) Ohio Rev. Stat. § 1345.01, *et seq.*; (cc) Okla. Stat. tit. 15 § 751, *et seq.*; (dd) Or. Rev. Stat. § 646.605, *et seq.*; (ee) 73 Pa. Stat. § 201-1, *et seq.*; (ff) R.I. Gen. Laws. § 6-13.1-1, *et seq.*; (gg) S.C. Code Laws § 39-5-10, *et seq.*; (hh) S.D. Code Laws § 37-24-1, *et seq.*; (ii) Tenn. Code § 47-18-101, *et seq.*; (jj) Tex. Bus. & Com. Code § 17.41, *et seq.*; (kk) Utah Code Ann. § 13-1 1-1, *et seq.*; (ll) Vt. Stat. Ann. tit. 9, § 245 1, *et seq.*; (mm) Va. Code § 59.1-196, *et seq.*; (nn) Wash. Rev. Code § 19.86.010, *et seq.*; (oo) W. Va. Code § 46A-6-101, *et seq.*; (pp) Wis. Stat. § 100.20, *et seq.*; and (qq) Wyo. Stat. § 40-12-100, *et seq.*. The Court finds that plaintiffs have complied with the notice provisions of all consumer protection acts requiring such notice.

e. Class 1 is certified pursuant to Fed. R. Civ. P. 23(b)(3) for damage claims.

f. The time period for this class is January 1, 1991 to January 1, 2005.

2. **Class 2: Third-Party Payor MediGap Supplemental Insurance Class.**

a. Class Definition:

All Third-Party Payors that made reimbursements for a Medicare Part B covered Subject Drug that was manufactured by AstraZeneca, the BMS Group, the GSK Group, the Johnson & Johnson Group, or the Schering Plough Group.

b. The Court certifies five Subclasses corresponding to each of the defendant groups

c. The Class representatives for Class 2 are: UFCW, PMBT, Blue Cross Blue Shield of Massachusetts, and Sheet Metal Workers Health Fund.

d. The Class 2 claims are certified for those states allowing corporations to bring consumer protection claims, including the following states:

(a) Alaska Stat. Code § 40.50.471, *et seq.*; (b) Ariz. Rev. Stat. § 44-1522, *et seq.*;

(c) Ark. Code § 4-88-101, *et seq.*, including 4-88-113(f), and 4-8-102(5); (d) Cal. Bus. & Prof. Code §§ 17200, *et seq.*; (e) Colo. Rev. Stat. § 6-1-105, *et seq.*, including § 6-1-113(1)(c) and § 6-1-102(b); (f) Conn. Gen. Stat. § 42-110b, *et seq.*, including § 42-110(a)(3); (g) 6 Del. Code § 2511, *et seq.*, including 6 Del. Code § 2512; (h) D.C. Code § 28-3901, *et seq.*, including § 28-390(1); (i) Fla. Stat. § 501.201, *et seq.*; (j) Idaho Code § 48-601, *et seq.*, including § 48-602;

(k) 815 ILCS § 505/1, *et seq.*; (l) Md. Com. Law Code § 13-101, *et seq.*, including § 13-101(h); (m) Mass. Gen. L. Ch. 93A, *et seq.*; (n) Mich. Stat. § 445.901, *et seq.*; (o) Minn. Stat. § 325F.67, *et seq.*, including § 407.010(5); (p) Vernon's Mo. Rev. Stat. § 407.010, *et seq.*; (q) Neb. Rev. Stat. § 59-1601, *et seq.*, including § 59-160(1); (r) Nev. Rev. Stat. § 598.0903, *et seq.*; (s) N.H. Rev. Stat. § 358-A:1, *et seq.*, including § 358A:1(1); (t) N.J. Stat. Ann. § 56:8-1, *et seq.*, § 56:8-1(d); (u) N.M. Stat. Ann. § 57-12-1, *et seq.*; (v) N.Y. Gen. Bus. Law § 349, *et seq.*; (w) N.C. Gen. Stat. § 75-1.1, *et seq.*; (x) N.D. Cent. Code § 51-15-01, *et seq.*, including § 51-15-01(4); (y) Ohio Rev. Stat. § 1345.01, *et seq.*, including § 1345.01(B); (z) Okla. Stat. tit. 15 § 751, *et seq.*; (aa) Or. Rev. Stat. § 646.605, *et seq.*, including § 646.605(4); (bb) 73 Pa. Stat. § 201-1, *et seq.*, including § 201-2(2); (cc) S.C. Code Laws § 39-5-10, *et seq.*, including § 39-5-10(9); (dd) S.D. Code Laws § 37-24-1, *et seq.*, including § 37-24-1(8); (ee) Tenn. Code § 47-18-101, *et seq.*, including § 47-18-103(9); (ff) Tex. Bus. & Com. Code § 17.41, *et seq.*, including § 17.45(4) (only for TPPs with assets less than \$25 million); (gg) Utah Code Ann. § 13-1 1-1, *et seq.*; (hh) Va. Code § 59.1-196, *et seq.*, including § 59.1-198; (ii) Wash. Rev. Code § 19.86.010, *et seq.*, including § 19.86.010(1); (jj) Wis. Stat. § 100.20, *et seq.*; and (kk) Wyo. Stat. § 40-12-100,

*et seq.*, including § 40-12-102(a)(i). The Court finds that plaintiffs have complied with the notice provisions of all consumer protection acts requiring such notice.

e. The Class is certified pursuant to Fed. R. Civ. P. 23(b)(3) for damage claims.

f. The time period for this class is January 1, 1991 to January 1, 2005.

3. **Class 3: Consumer and Third-Party Payor Class for Medicare Part B Drugs Outside of the Medicare Context.**

a. Class Definition:

All natural persons and Third-Party Payors that made payments or reimbursements, or who have a currently enforceable obligation to make a payment or reimbursement, for Subject Drugs prescribed in the Commonwealth of Massachusetts and manufactured by AstraZeneca, the BMS Group, the GSK Group, the Johnson & Johnson Group, or the Schering Plough Group, where such payments or reimbursements were based on contracts that expressly use AWP as a pricing standard. Included within this Class are individuals who paid coinsurance (*i.e.*, co-pays proportional to the reimbursed amount) for a Subject Drug, where such coinsurance was based upon use of AWP as a pricing standard. Excluded from this Class 3 are any payments or reimbursements for generic drugs that are based on MAC and not AWP.

b. The Court certifies five Subclasses corresponding to each of the defendant groups.

c. The Class is certified pursuant to Fed. R. Civ. P. 23(b)(3) for damage claims and (b)(2) for injunctive purposes.

d. The class representatives for Class 3 are: Blue Cross Blue Shield of Massachusetts, Sheet Metal Workers Health Fund, and the Pipefitters Local 537 Trust Funds, and Health Care For All for the 23(b)(2) Class.

e. The claims for this Class are certified under Mass. Gen. Laws ch. 93A for the purposes of a test case, after which the Court will examine the issue of a broader certification.

f. The Class period is January 1, 1991 to the present.

## **II. CLASSES NOT CERTIFIED**

1. With respect to Class 3, the Court declines at this time to certify this Class under the consumer protection laws of states other than Massachusetts. However, this denial is without prejudice and does not affect the statute of limitations, which remains tolled until such time as the Court makes a final ruling. The Court intends the proceedings with respect to Class 3 to provide important information for an accurate evaluation of claims under other states' laws. Accordingly, at a later date plaintiffs can renew their motion to certify Class 3 for purposes of the application of the consumer protection acts of other states.

2. The Court declines to certify a Class of Consumers and Third-Party Payors who made payments or reimbursements for self-administered drugs not appearing in the appended Table of Subject Drugs to the extent monetary claims were sought for those drugs (*see* Memorandum Opinion of August 16, 2005).

## **III. MISCELLANEOUS**

1. To the extent that it is not inconsistent herewith, this Court's August 16, 2005, Memoranda and Order Re: Motion for Class Certification is incorporated herein.

2. Excluded from these Classes are the defendants herein; any subsidiaries or affiliates of defendants; the officers and directors of defendants during the Class Period; members of the defendants' immediate families; any person, firm, trust, corporation, officer, director or any individual or entity in which any defendant has a controlling interest or which is related to, or affiliated with, any of the defendants; the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded parties and governmental entities.

3. Pursuant to Fed. R. Civ. P. 23(g), the Court appoints the following firms as Co-Lead Counsel: Hagens Berman Sobol Shapiro LLP; Spector Roseman & Kodroff, P.C.; Hoffman & Edelson; The Wexler Firm LLP; and Kline & Specter.

4. Co-Lead Counsel for Plaintiffs shall prepare and submit within 30 days from the date of this Order a proposed form and method of notice to be sent to members of the Classes

and a supporting motion. Defendants may file any comments to the notice within 15 days, and Plaintiffs may reply 15 days thereafter. The motion and supporting memorandum shall not exceed 20 pages; any response by defendants shall not exceed 10 pages; and the reply shall not exceed 5 pages. There will be no sur-replies, supplemental replies, letter briefs, motions to strike or similar subterfuges for more briefing opportunity. There shall be no individual briefs by each defendant. The parties shall be reasonable with respect to any appendices.

5. The "Together Rx" claims are not certified because they are dismissed without prejudice by the filing of the TAMCAC.

6. The Court retains the discretion under Rule 23 to modify this Order.

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PATTI B. SARIS  
United States District Judge

## **TABLE OF SUBJECT DRUGS**

**AZ NDC List**

| <b>NDC</b>  | <b>Description</b>                        |
|-------------|---|
| 00186198804 | PULMICORT RESPULES 60 mls 2 X 30.25mg/2mL |
| 00186198904 | PULMICORT RESPULES 60 mls 2x30 .5mg/2mL   |
| 00310096036 | Zoladex 3.6mg 1x1EA Depot                 |
| 00310096130 | Zoladex 10.8mg 1x1EA Depot                |
| 00310095130 | Zoladex 10.8mg 1x1EA Depot                |
| 00310095036 | Zoladex 3.6mg 1x1EA Depot                 |

**BMS NDC List**

| <b>NDC</b>  | <b>Description</b>        |
|-------------|---------------------------|
| 00015301026 | BLENOXANE INJ 15 UNIT VHA |
| 00015301020 | BLENOXANE INJ 15 UNIT VL  |
| 00015306326 | BLENOXANE INJ 30 UNIT VHA |
| 00015306301 | BLENOXANE INJ 30 UNIT VL  |
| 00590032435 | COUMADIN INJ 5MG VIAL     |
| 00015053910 | CYTOXAN 100MG LYOPH W/CYT |
| 00015054812 | CYTOXAN 1G 6X50ML VHA+    |
| 00015054810 | CYTOXAN 1GM LYOPH W/CYTOG |
| 00015054610 | CYTOXAN 200MG LYOPH W/CYT |
| 00015054912 | CYTOXAN 2G 6X100ML VHA+   |
| 00015054910 | CYTOXAN 2GM LYOPH W/CYTOG |
| 00015054710 | CYTOXAN 500MG LYOPH W/CYT |
| 00015050001 | CYTOXAN FOR INJ 100 MG    |
| 00015050041 | CYTOXAN INJ 100MG         |
| 00015050641 | CYTOXAN INJ 1X2GM VIAL    |
| 00015050241 | CYTOXAN INJ 1X500MG VIAL  |
| 00015050141 | CYTOXAN INJ 200MG         |
| 00015054712 | CYTOXAN LYO 500MG VL VHA  |
| 00015054741 | CYTOXAN LYOPH 500MG       |
| 00015053941 | CYTOXAN LYOPHILIZED 100MG |
| 00015054841 | CYTOXAN LYOPHILIZED 1GM   |
| 00015054641 | CYTOXAN LYOPHILIZED 200MG |
| 00015054941 | CYTOXAN LYOPHILIZED 2GM   |
| 00015050541 | CYTOXAN PINJ 1X1G VIAL    |
| 00015050303 | CYTOXAN TABLETS 50 MG     |
| 00015050302 | CYTOXAN TABLETS 50MG      |
| 00015050401 | CYTOXAN TABS 25MG         |
| 00015050301 | CYTOXAN TABS 50MG         |
| 00015050348 | CYTOXAN TABS 50MG         |
| 00015340420 | ETOPOPHOS 100MG VIAL      |
| 00015321429 | PARAPLATIN 10X15ML VHA+   |
| 00015321529 | PARAPLATIN 10X45ML VHA+   |
| 00015321329 | PARAPLATIN 10X5ML VHA+    |
| 00015321410 | PARAPLATIN 150MG LYOPH CY |
| 00015321430 | PARAPLATIN 1X150MG LYO VL |
| 00015321530 | PARAPLATIN 1X450MG LYO VL |
| 00015321510 | PARAPLATIN 450MG VL W/CYT |
| 00015321330 | PARAPLATIN 50MG LYOPHILIZ |
| 00015321310 | PARAPLATIN 50MG W/CYTO    |
| 00015335322 | RUBEX 100 MG LYOPHILIZED  |
| 00015335324 | RUBEX 100MG IMMUNEX LABEL |
| 00015335124 | RUBEX 10MG IMMUNEX LABEL  |
| 00015335122 | RUBEX 10MG LYOPHILIZED    |
| 00015335224 | RUBEX 50MG IMMUNEX LABEL  |
| 00015335222 | RUBEX 50MG LYOPHILIZED    |
| 00015347630 | TAXOL 100MG INJ MULTIDOSE |
| 00015347627 | TAXOL 100MG SEM-SYN VIAL  |
| 00015347620 | TAXOL 100MG/16.7ML VHA+ L |

00015347911 TAXOL 300MG/50ML VIAL  
00015345620 TAXOL 30MG CONC FOR INJ  
00015347530 TAXOL 30MG INJ MULTIDOSE  
00015347527 TAXOL 30MG SEM-SYN VIAL  
00015347520 TAXOL 30MG/5ML VHA+ LABEL  
00015309510 VEPESID 100MG VIAL W/CYTO  
00015309530 VEPESID 100MG VL W/O CYTO  
00015306224 VEPESID 1G 50ML VIAL VHA+  
00015306220 VEPESID 1GM/50ML  
00015306120 VEPESID 500MG  
00015306124 VEPESID 500MG 25ML VL VHA  
00015309145 VEPESID 50MG CAPSULES  
00015309520 VEPESID INJ 100MG/5ML  
00015308420 VEPESID INJ 150MG/7.5ML

**GSK NDC List**

| <b>NDC</b>  | <b>Description</b>                       |
|-------------|--|
| 00173013093 | ALKERAN I.V. INJ 50 MG                   |
| 00173004535 | ALKERAN TAB 2MG 50S                      |
| 00173044902 | IMITREX INJ 0.5ML 12MG/ML 5S VIALS       |
| 00173044901 | IMITREX INJ 12MG/ML 0.5ML 2S PFLD SRNG   |
| 00173044903 | IMITREX INJ 12MG/ML 0.5ML2S KIT,SELFDOSE |
| 00173047900 | IMITREX INJ 12MG/ML STAT DOSE KIT        |
| 00173047800 | IMITREX INJ 12MG/ML STAT DOSE RFL 2'S    |
| 00173403291 | IMITREX SELFDOSE SYSTEM SELFDOSE UNIT/C  |
| 00173408367 | ITMD ZOVIRAX STERILE POWDER 1000MG (BWX9 |
| 00029415105 | KYTRIL 1 MG TABS 20'S SUP                |
| 00029415139 | KYTRIL 1MG TABS 2'S                      |
| 00029415201 | KYTRIL 1MG/ML INJECTION 4ML VIAL         |
| 00029414975 | KYTRIL INJ SGL DOSE VIAL 1MG/ML VHA      |
| 00029414901 | KYTRIL INJ SINGLE DOSE VIAL 1MG/ML       |
| 00173026010 | LANOXIN INJ 0.5MG -PART 1.00             |
| 00173026035 | LANOXIN INJ 0.5MG 2ML 50S                |
| 00173026210 | LANOXIN INJ PEDIATRIC 0.1MG/ML           |
| 00173026015 | LANOXIN INJECTION -PART 1.00             |
| 00173026055 | LANOXIN INJECTION -PART 1.00             |
| 00173071325 | MYLERAN TAB 2MG 25S                      |
| 00173065601 | NAVELBINE INJ 10MG 1ML                   |
| 00173065644 | NAVELBINE INJ 50MG 5ML                   |
| 00173010793 | RETROVIR IV INF 10MG/ML 20ML 10          |
| 00173041900 | VENTOLIN NEB SOL INH 0.083% 3ML 25S      |
| 00173041901 | VENTOLIN NEB SOL INH 0.083% 3ML 5S S     |
| 00173038501 | VENTOLIN SOL INH 0.5% 5MG/ML 10ML        |
| 00173038558 | VENTOLIN SOL INH 0.5% 5MG/ML 20ML        |
| 00173044200 | ZOFRAN INJ 2MG/ML 20ML                   |
| 00173044202 | ZOFRAN INJ 2MG/ML 2ML 5S                 |
| 00173046100 | ZOFRAN INJ PRMXD 32MG/50ML               |
| 00173046200 | ZOFRAN INJ PRMXD 4MG/50ML                |
| 00173056900 | ZOFRAN ODT 4MG 5X2 30S                   |
| 00173057004 | ZOFRAN ODT 8MG 5X2 10'S                  |
| 00173057000 | ZOFRAN ODT 8MG 5X2 30S                   |
| 00173048900 | ZOFRAN ORAL SOL 4MG/5ML 50ML             |
| 00173068000 | ZOFRAN TAB 24MG 1S                       |
| 00173044601 | ZOFRAN TAB 4MG 100S                      |
| 00173044602 | ZOFRAN TAB 4MG 100S UD                   |
| 00173044600 | ZOFRAN TAB 4MG 30S                       |
| 00173044604 | ZOFRAN TAB 4MG 3S                        |
| 00173044701 | ZOFRAN TAB 8MG 100S                      |
| 00173044702 | ZOFRAN TAB 8MG 100S UD                   |
| 00173044700 | ZOFRAN TAB 8MG 30S                       |
| 00173044704 | ZOFRAN TAB 8MG 3S                        |
| 00173095201 | ZOVIRAX FOR INJECTION 1000MG 20ML 10S (C |
| 00173099501 | ZOVIRAX FOR INJECTION 500MG 10ML 10S (C# |

**J&J NDC List**

| <b>NDC</b>  | <b>Description</b>     |
|-------------|------------------------|
| 57894003001 | C168J REMICADE 1PCK    |
| 59676031201 | PROCRIT 10,000 U/ML    |
| 59676031002 | PROCRIT 10000 U        |
| 59676031001 | PROCRIT 10000 U/ML     |
| 00062740103 | PROCRIT 10000U/ML AMG  |
| 59676032001 | PROCRIT 20,000 U/ML    |
| 59676030202 | PROCRIT 2000 U/        |
| 59676030201 | PROCRIT 2000 U/ML 6    |
| 00062740201 | PROCRIT 2000U/ML AMG   |
| 59676030302 | PROCRIT 3000 U/        |
| 59676030301 | PROCRIT 3000 U/ML 6    |
| 00062740503 | PROCRIT 3000 U/ML INST |
| 00062740501 | PROCRIT 3000U/ML AMG   |
| 59676030402 | PROCRIT 4000 U/        |
| 59676030401 | PROCRIT 4000 U/ML 6    |
| 00062740004 | PROCRIT 4000 U/ML INST |
| 59676034001 | PROCRIT 40000 U/ML     |
| 00062740003 | PROCRIT 4000U/ML AMG   |
| 00062542307 | PWRWNG PERMANEN        |

**SP NDC List**

| <b>NDC</b>  | <b>Description</b>             |
|-------------|--------------------------------|
| 59930151504 | ALBUTEROL INHALATION SOLUTION  |
| 59930164702 | ALBUTEROL INHALATION SOLUTION  |
| 59930150006 | ALBUTEROL SULFATE INHAL. SOL.  |
| 59930150008 | ALBUTEROL SULFATE INHAL. SOL.  |
| 59930151701 | ALBUTEROL SULFATE SOLUTION     |
| 59930151702 | ALBUTEROL SULFATE SOLUTION     |
| 59930155020 | ALBUTEROL SULFATE SOLUTION     |
| 00085113601 | INTEGRILIN                     |
| 00085117701 | INTEGRILIN                     |
| 00085117702 | INTEGRILIN                     |
| 00085123501 | INTRON A FOR INJ MULTIDOSE PEN |
| 00085124201 | INTRON A FOR INJ MULTIDOSE PEN |
| 00085125401 | INTRON A FOR INJ MULTIDOSE PEN |
| 00085116801 | INTRON A INJ 18MIU HSA FREE    |
| 00085113301 | INTRON A INJ 25MIU HSA FREE    |
| 00085118401 | INTRON A INJ 3MIU HSA FREE     |
| 00085118402 | INTRON A INJ 3MIU HSA FREE     |
| 00085119101 | INTRON A INJ 5MIU HSA FREE     |
| 00085119102 | INTRON A INJ 5MIU HSA FREE     |
| 00085117901 | INTRON A INJ PAK10MIU HSA FREE |
| 00085117902 | INTRON A INJ PAK10MIU HSA FREE |
| 00085057102 | INTRON A INJECTABLE 10MILLN IU |
| 00085057106 | INTRON A INJECTABLE 10MILLN IU |
| 00085111001 | INTRON A INJECTABLE 18MILLN IU |
| 00085028502 | INTRON A INJECTABLE 25MILLN IU |
| 00085064703 | INTRON A INJECTABLE 3MILLN IU  |
| 00085064704 | INTRON A INJECTABLE 3MILLN IU  |
| 00085064705 | INTRON A INJECTABLE 3MILLN IU  |
| 00085012002 | INTRON A INJECTABLE 5 MILLN IU |
| 00085012003 | INTRON A INJECTABLE 5 MILLN IU |
| 00085012004 | INTRON A INJECTABLE 5 MILLN IU |
| 00085012005 | INTRON A INJECTABLE 5 MILLN IU |
| 00085053901 | INTRON A INJECTABLE 50MILLN IU |
| 00085068901 | INTRON A INJECTION 18 MIU      |
| 00085092301 | INTRON A SOL FOR INJ 10 MILLI  |
| 00085076901 | INTRON A SOL. FOR INJ. 25MILLN |
| 00085095301 | INTRON A SOLUTION 18MIU 3ML    |
| 59930160001 | PERPHENAZINE                   |
| 59930160002 | PERPHENAZINE                   |
| 59930161001 | PERPHENAZINE 16MG              |
| 59930160501 | PERPHENAZINE 8MG               |
| 59930160502 | PERPHENAZINE 8MG               |
| 59930160301 | PERPHENAZINE TABLETS           |
| 59930160302 | PERPHENAZINE TABLETS           |
| 00085133601 | PROVENTIL INHALATION SOLUTION  |
| 00085020901 | PROVENTIL SOLUTION .083MG/ML   |
| 00085180601 | PROVENTIL SOLUTION .083MG/ML   |
| 00085020802 | PROVENTIL SOLUTION 5MG/ML      |

00085020852 PROVENTIL SOLUTION 5MG/ML  
00085125901 TEMODAR 100MG  
00085125902 TEMODAR 100MG  
00085124401 TEMODAR 20MG  
00085124402 TEMODAR 20MG  
00085125201 TEMODAR 250MG  
00085125202 TEMODAR 250MG  
00085124801 TEMODAR 5MG  
00085124802 TEMODAR 5MG

**CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **[PROPOSED] CONSOLIDATED ORDER RE: MOTION FOR CLASS CERTIFICATION** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on January 23, 2006, a copy to LexisNexis File and Serve for Posting and notification to all parties

By /s/ Steve W. Berman  
Steve W. Berman  
**HAGENS BERMAN SOBOL SHAPIRO LLP**  
1301 Fifth Avenue, Suite 2900  
Seattle, WA 98101  
(206) 623-7292

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY )  
AVERAGE WHOLESALE PRICE LITIGATION ) MDL No. 1456  
} \_\_\_\_\_  
} CIVIL ACTION: 01-CV-12257-PBS  
THIS DOCUMENT RELATES TO ALL )  
CLASS ACTIONS )  
01-CV-12257-PBS AND 01-CV-339 )  
} \_\_\_\_\_

**[MODIFIED AND PROPOSED VERSION 2]  
CONSOLIDATED ORDER RE: MOTION FOR CLASS CERTIFICATION**

\_\_\_\_\_, 2006

Saris, U.S.D.J.

Plaintiffs have moved, pursuant to Fed. R. Civ. P. 23, for an order certifying a class in this action. Having considered the submissions of the parties and the record in this case, IT IS HEREBY ORDERED that plaintiffs' motion for class certification is GRANTED IN PART and DENIED IN PART as to the claims asserted in the Third Amended Master Consolidated Class Action Complaint ("TAMCAC"), as follows:

**I. CLASSES AND SUBCLASSES CERTIFIED**

The Court certifies the following Classes:

**1. Class 1: Medicare Part B Co-Pay Class.**

**a. Class Definition:**

All natural persons nationwide who made a co-payment, or who have incurred a currently enforceable obligation to make a co-payment, for a Medicare Part B covered Subject Drug<sup>1</sup> that was manufactured by AstraZeneca, the BMS

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<sup>1</sup> The Subject Drugs are identified in the Table of Subject Drugs found at the end of this Order.

Group, the GSK Group, or the Johnson & Johnson Group.<sup>2</sup> Excluded from the Class are those who made flat co-pays; and the residents of the states of Alabama, Georgia, Iowa, Louisiana, Mississippi and Montana (where consumer protection statutes do not permit class actions).

b. The Court certifies four Subclasses corresponding to each of the defendant groups

c. The Court also certifies the following plaintiffs as Class 1 Representatives of these Subclasses: Leroy Townsend (Astra); Reverend David and Susan Ruth Aaronson (BMS, GSK); Joyce Howe individually and on behalf of the Estate of Robert Howe (Astra); James and Teresa Shepley (J&J, Astra); and Larry Young individually and on behalf of the Estate of Patricia Young (J&J). Consistent with the Court's February 24, 2004, Memorandum and Order, the Representative of a Subclass need only have paid or reimbursed for one of the Subject Drugs manufactured or marketed by a defendant group.

d. The consumer protection act of each state shall apply to these Subclasses. Specifically, the Medicare Co-pay Class is certified for claims under the following statutes: (a) Alaska Stat. Code § 40.50.471, *et seq.*; (b) Ariz. Rev. Stat. § 44-1522, *et seq.*; (c) Ark. Code § 4-88-101, *et seq.*; (d) Cal. Bus. & Prof. Code §§ 17200, *et seq.*, 1770; (e) Colo. Rev. Stat. § 6-1-105, *et seq.*; (f) Conn. Gen. Stat. § 42-110b, *et seq.*; (g) 6 Del. Code § 2511, *et seq.*; (h) D.C. Code § 28-3901, *et seq.*; (i) Fla. Stat. § 501.201, *et seq.*; (j) Haw. Rev. Stat. § 480, *et seq.*; (k) Idaho Code § 48-601, *et seq.*; (l) 815 ILCS § 505/1, *et seq.*; (m) Ind. Code Ann. § 24-5-0.5.1, *et seq.*; (n) Kan. Stat. § 50-623, *et seq.*; (o) Md. Com. Law Code § 13-101, *et seq.*; (p) Mass. Gen. L. Ch. 93A, *et seq.*; (q) Mich. Stat. § 445.901, *et seq.*; (r) Minn. Stat. § 325F.67, *et seq.*; (s) Mo. Rev. Stat. § 407.010, *et seq.*; (t) Neb. Rev. Stat. § 59-1601, *et seq.*; (u) Nev. Rev. Stat. § 598.0903, *et seq.*; (v) N.H. Rev. Stat. § 358-A:1, *et seq.*; (w) N.J. Stat. Ann. § 56:8-1, *et seq.*;

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<sup>2</sup> These "groups" are defined in the TAMCAC.

(x) N.M. Stat. Ann. § 57-12-1, *et seq.*; (y) N.Y. Gen. Bus. Law § 349, *et seq.*;  
(z) N.C. Gen. Stat. § 75-1.1, *et seq.*; (aa) N.D. Cent. Code § 51-15-01, *et seq.*;  
(bb) Ohio Rev. Stat. § 1345.01, *et seq.*; (cc) Okla. Stat. tit. 15 § 751, *et seq.*;  
(dd) Or. Rev. Stat. § 646.605, *et seq.*; (ee) 73 Pa. Stat. § 201-1, *et seq.*; (ff) R.I.  
Gen. Laws. § 6-13.1-1, *et seq.*; (gg) S.C. Code Laws § 39-5-10, *et seq.*; (hh) S.D.  
Code Laws § 37-24-1, *et seq.*; (ii) Tenn. Code § 47-18-101, *et seq.*; (jj) Tex. Bus.  
& Com. Code § 17.41, *et seq.*; (kk) Utah Code Ann. § 13-1 1-1, *et seq.*; (ll) Vt.  
Stat. Ann. tit. 9, § 245 1, *et seq.*; (mm) Va. Code § 59.1-196, *et seq.*; (nn) Wash.  
Rev. Code § 19.86.010, *et seq.*; (oo) W. Va. Code § 46A-6-101, *et seq.*; (pp) Wis.  
Stat. § 100.20, *et seq.*; and (qq) Wyo. Stat. § 40-12-100, *et seq.*. The Court finds  
that plaintiffs have complied with the notice provisions of all consumer protection  
acts requiring such notice.

e. Class 1 is certified pursuant to Fed. R. Civ. P. 23(b)(3) for damage  
claims.

f. The time frame for this Class is January 1, 1991 to January 1,  
2005.

2. **Class 2: Third-Party Payor MediGap Supplemental Insurance Class.**

a. Class Definition:

All Third-Party Payors that made reimbursements for a  
Medicare Part B covered Subject Drug prescribed in the  
State of Massachusetts that was manufactured by  
AstraZeneca, the BMS Group, the GSK Group, the Johnson  
& Johnson Group, or the Schering Plough Group.

b. The Court certifies five Subclasses corresponding to each of the  
defendant groups.

c. The Class representatives for Class 2 are: Blue Cross Blue Shield  
of Massachusetts and Sheet Metal Workers Health Fund.

d. The claims for this Class are certified under Mass. Gen. Laws ch. 93A for the purposes of a test case, after which the Court will examine the issue of a broader certification.

e. The Class is certified pursuant to Fed. R. Civ. P. 23(b)(3) for damage claims.

f. The time period for this class is January 1, 1991 to January 1, 2005.

3. **Class 3: Consumer and Third-Party Payor Class for Medicare Part B Drugs Outside of the Medicare Context.**

a. Class Definition:

All natural persons and Third-Party Payors that made payments or reimbursements, or who have a currently enforceable obligation to make a payment or reimbursement, for Subject Drugs prescribed in the Commonwealth of Massachusetts and manufactured by AstraZeneca, the BMS Group, the GSK Group, the Johnson & Johnson Group, or the Schering Plough Group, where such payments or reimbursements were based on contracts that expressly use AWP as a pricing standard. Included within this Class are individuals who paid coinsurance (*i.e.*, co-pays proportional to the reimbursed amount) for a Subject Drug, where such coinsurance was based upon use of AWP as a pricing standard. Excluded from this Class 3 are any payments or reimbursements for generic drugs that are based on MAC and not AWP.

b. The Court certifies five Subclasses corresponding to each of the defendant groups.

c. The Class is certified pursuant to Fed. R. Civ. P. 23(b)(3) for damage claims and (b)(2) for injunctive purposes.

d. The class representatives for Class 3 are: Blue Cross Blue Shield of Massachusetts, Sheet Metal Workers Health Fund, Pipefitters Local 537 Trust Funds, and Health Care for All for the (b)(2) Class.

e. The claims for this Class are certified under Mass. Gen. Laws ch. 93A for the purposes of a test case, after which the Court will examine the issue of a broader certification.

## **II. CLASSES NOT CERTIFIED**

1. With respect to Classes 2 and 3, the Court declines at this time to certify these Classes under the consumer protection laws of states other than Massachusetts. However, this denial is without prejudice and does not affect the statute of limitations, which remains tolled until such time as the Court makes a final ruling. The Court intends the trial of the Massachusetts Class to provide important information for an accurate evaluation of claims under other states' laws. Accordingly, at a later date plaintiffs can renew their motion to certify Classes 2 and 3 for purposes of the application of the consumer protection acts of other states.

2. The Court declines to certify a Class of Consumers and Third-Party Payors who made payments or reimbursements for self-administered drugs not appearing in the appended Table of Subject Drugs to the extent monetary claims were sought for those drugs (*see Memorandum Opinion of August 16, 2005*).

## **III. MISCELLANEOUS**

1. To the extent that it is not inconsistent herewith, this Court's August 16, 2005, Memoranda and Order Re: Motion for Class Certification is incorporated herein.

2. Excluded from these Classes are the defendants herein; any subsidiaries or affiliates of defendants; the officers and directors of defendants during the Class Period; members of the defendants' immediate families; any person, firm, trust, corporation, officer, director or any individual or entity in which any defendant has a controlling interest or which is related to, or affiliated with, any of the defendants; the legal representatives, agents, affiliates, heirs, successors-in-interest or assigns of any such excluded parties and governmental entities.

3. Pursuant to Fed. R. Civ. P. 23(g), the Court appoints the following firms as Co-Lead Counsel: Hagens Berman Sobol Shapiro LLP; Spector Roseman & Kodroff, P.C.; Hoffman & Edelson; The Wexler Firm LLP; and Kline & Specter.

## **TABLE OF SUBJECT DRUGS**

**AZ NDC List**

| <b>NDC</b>  | <b>Description</b>                        |
|-------------|---|
| 00186198804 | PULMICORT RESPULES 60 mls 2 X 30.25mg/2mL |
| 00186198904 | PULMICORT RESPULES 60 mls 2x30 .5mg/2mL   |
| 00310096036 | Zoladex 3.6mg 1x1EA Depot                 |
| 00310096130 | Zoladex 10.8mg 1x1EA Depot                |
| 00310095130 | Zoladex 10.8mg 1x1EA Depot                |
| 00310095036 | Zoladex 3.6mg 1x1EA Depot                 |

**BMS NDC List**

| <b>NDC</b>  | <b>Description</b>        |
|-------------|---------------------------|
| 00015301026 | BLENOXANE INJ 15 UNIT VHA |
| 00015301020 | BLENOXANE INJ 15 UNIT VL  |
| 00015306326 | BLENOXANE INJ 30 UNIT VHA |
| 00015306301 | BLENOXANE INJ 30 UNIT VL  |
| 00590032435 | COUMADIN INJ 5MG VIAL     |
| 00015053910 | CYTOXAN 100MG LYOPH W/CYT |
| 00015054812 | CYTOXAN 1G 6X50ML VHA+    |
| 00015054810 | CYTOXAN 1GM LYOPH W/CYTOG |
| 00015054610 | CYTOXAN 200MG LYOPH W/CYT |
| 00015054912 | CYTOXAN 2G 6X100ML VHA+   |
| 00015054910 | CYTOXAN 2GM LYOPH W/CYTOG |
| 00015054710 | CYTOXAN 500MG LYOPH W/CYT |
| 00015050001 | CYTOXAN FOR INJ 100 MG    |
| 00015050041 | CYTOXAN INJ 100MG         |
| 00015050641 | CYTOXAN INJ 1X2GM VIAL    |
| 00015050241 | CYTOXAN INJ 1X500MG VIAL  |
| 00015050141 | CYTOXAN INJ 200MG         |
| 00015054712 | CYTOXAN LYO 500MG VL VHA  |
| 00015054741 | CYTOXAN LYOPH 500MG       |
| 00015053941 | CYTOXAN LYOPHILIZED 100MG |
| 00015054841 | CYTOXAN LYOPHILIZED 1GM   |
| 00015054641 | CYTOXAN LYOPHILIZED 200MG |
| 00015054941 | CYTOXAN LYOPHILIZED 2GM   |
| 00015050541 | CYTOXAN PINJ 1X1G VIAL    |
| 00015050303 | CYTOXAN TABLETS 50 MG     |
| 00015050302 | CYTOXAN TABLETS 50MG      |
| 00015050401 | CYTOXAN TABS 25MG         |
| 00015050301 | CYTOXAN TABS 50MG         |
| 00015050348 | CYTOXAN TABS 50MG         |
| 00015340420 | ETOPOPHOS 100MG VIAL      |
| 00015321429 | PARAPLATIN 10X15ML VHA+   |
| 00015321529 | PARAPLATIN 10X45ML VHA+   |
| 00015321329 | PARAPLATIN 10X5ML VHA+    |
| 00015321410 | PARAPLATIN 150MG LYOPH CY |
| 00015321430 | PARAPLATIN 1X150MG LYO VL |
| 00015321530 | PARAPLATIN 1X450MG LYO VL |
| 00015321510 | PARAPLATIN 450MG VL W/CYT |
| 00015321330 | PARAPLATIN 50MG LYOPHILIZ |
| 00015321310 | PARAPLATIN 50MG W/CYTO    |
| 00015335322 | RUBEX 100 MG LYOPHILIZED  |
| 00015335324 | RUBEX 100MG IMMUNEX LABEL |
| 00015335124 | RUBEX 10MG IMMUNEX LABEL  |
| 00015335122 | RUBEX 10MG LYOPHILIZED    |
| 00015335224 | RUBEX 50MG IMMUNEX LABEL  |
| 00015335222 | RUBEX 50MG LYOPHILIZED    |
| 00015347630 | TAXOL 100MG INJ MULTIDOSE |
| 00015347627 | TAXOL 100MG SEM-SYN VIAL  |
| 00015347620 | TAXOL 100MG/16.7ML VHA+ L |

00015347911 TAXOL 300MG/50ML VIAL  
00015345620 TAXOL 30MG CONC FOR INJ  
00015347530 TAXOL 30MG INJ MULTIDOSE  
00015347527 TAXOL 30MG SEM-SYN VIAL  
00015347520 TAXOL 30MG/5ML VHA+ LABEL  
00015309510 VEPESID 100MG VIAL W/CYTO  
00015309530 VEPESID 100MG VL W/O CYTO  
00015306224 VEPESID 1G 50ML VIAL VHA+  
00015306220 VEPESID 1GM/50ML  
00015306120 VEPESID 500MG  
00015306124 VEPESID 500MG 25ML VL VHA  
00015309145 VEPESID 50MG CAPSULES  
00015309520 VEPESID INJ 100MG/5ML  
00015308420 VEPESID INJ 150MG/7.5ML

**GSK NDC List**

| <b>NDC</b>  | <b>Description</b>                       |
|-------------|--|
| 00173013093 | ALKERAN I.V. INJ 50 MG                   |
| 00173004535 | ALKERAN TAB 2MG 50S                      |
| 00173044902 | IMITREX INJ 0.5ML 12MG/ML 5S VIALS       |
| 00173044901 | IMITREX INJ 12MG/ML 0.5ML 2S PFLD SRNG   |
| 00173044903 | IMITREX INJ 12MG/ML 0.5ML2S KIT,SELFDOSE |
| 00173047900 | IMITREX INJ 12MG/ML STAT DOSE KIT        |
| 00173047800 | IMITREX INJ 12MG/ML STAT DOSE RFL 2'S    |
| 00173403291 | IMITREX SELFDOSE SYSTEM SELFDOSE UNIT/C  |
| 00173408367 | ITMD ZOVIRAX STERILE POWDER 1000MG (BWX9 |
| 00029415105 | KYTRIL 1 MG TABS 20'S SUP                |
| 00029415139 | KYTRIL 1MG TABS 2'S                      |
| 00029415201 | KYTRIL 1MG/ML INJECTION 4ML VIAL         |
| 00029414975 | KYTRIL INJ SGL DOSE VIAL 1MG/ML VHA      |
| 00029414901 | KYTRIL INJ SINGLE DOSE VIAL 1MG/ML       |
| 00173026010 | LANOXIN INJ 0.5MG -PART 1.00             |
| 00173026035 | LANOXIN INJ 0.5MG 2ML 50S                |
| 00173026210 | LANOXIN INJ PEDIATRIC 0.1MG/ML           |
| 00173026015 | LANOXIN INJECTION -PART 1.00             |
| 00173026055 | LANOXIN INJECTION -PART 1.00             |
| 00173071325 | MYLERAN TAB 2MG 25S                      |
| 00173065601 | NAVELBINE INJ 10MG 1ML                   |
| 00173065644 | NAVELBINE INJ 50MG 5ML                   |
| 00173010793 | RETROVIR IV INF 10MG/ML 20ML 10          |
| 00173041900 | VENTOLIN NEB SOL INH 0.083% 3ML 25S      |
| 00173041901 | VENTOLIN NEB SOL INH 0.083% 3ML 5S S     |
| 00173038501 | VENTOLIN SOL INH 0.5% 5MG/ML 10ML        |
| 00173038558 | VENTOLIN SOL INH 0.5% 5MG/ML 20ML        |
| 00173044200 | ZOFRAN INJ 2MG/ML 20ML                   |
| 00173044202 | ZOFRAN INJ 2MG/ML 2ML 5S                 |
| 00173046100 | ZOFRAN INJ PRMxD 32MG/50ML               |
| 00173046200 | ZOFRAN INJ PRMxD 4MG/50ML                |
| 00173056900 | ZOFRAN ODT 4MG 5X2 30S                   |
| 00173057004 | ZOFRAN ODT 8MG 5X2 10'S                  |
| 00173057000 | ZOFRAN ODT 8MG 5X2 30S                   |
| 00173048900 | ZOFRAN ORAL SOL 4MG/5ML 50ML             |
| 00173068000 | ZOFRAN TAB 24MG 1S                       |
| 00173044601 | ZOFRAN TAB 4MG 100S                      |
| 00173044602 | ZOFRAN TAB 4MG 100S UD                   |
| 00173044600 | ZOFRAN TAB 4MG 30S                       |
| 00173044604 | ZOFRAN TAB 4MG 3S                        |
| 00173044701 | ZOFRAN TAB 8MG 100S                      |
| 00173044702 | ZOFRAN TAB 8MG 100S UD                   |
| 00173044700 | ZOFRAN TAB 8MG 30S                       |
| 00173044704 | ZOFRAN TAB 8MG 3S                        |
| 00173095201 | ZOVIRAX FOR INJECTION 1000MG 20ML 10S (C |
| 00173099501 | ZOVIRAX FOR INJECTION 500MG 10ML 10S (C# |

**J&J NDC List**

| <b>NDC</b>  | <b>Description</b>     |
|-------------|------------------------|
| 57894003001 | C168J REMICADE 1PCK    |
| 59676031201 | PROCRIT 10,000 U/ML    |
| 59676031002 | PROCRIT 10000 U        |
| 59676031001 | PROCRIT 10000 U/ML     |
| 00062740103 | PROCRIT 10000U/ML AMG  |
| 59676032001 | PROCRIT 20,000 U/ML    |
| 59676030202 | PROCRIT 2000 U/        |
| 59676030201 | PROCRIT 2000 U/ML 6    |
| 00062740201 | PROCRIT 2000U/ML AMG   |
| 59676030302 | PROCRIT 3000 U/        |
| 59676030301 | PROCRIT 3000 U/ML 6    |
| 00062740503 | PROCRIT 3000 U/ML INST |
| 00062740501 | PROCRIT 3000U/ML AMG   |
| 59676030402 | PROCRIT 4000 U/        |
| 59676030401 | PROCRIT 4000 U/ML 6    |
| 00062740004 | PROCRIT 4000 U/ML INST |
| 59676034001 | PROCRIT 40000 U/ML     |
| 00062740003 | PROCRIT 4000U/ML AMG   |
| 00062542307 | PWRWNG PERMANEN        |

**SP NDC List**

| <b>NDC</b>  | <b>Description</b>             |
|-------------|--------------------------------|
| 59930151504 | ALBUTEROL INHALATION SOLUTION  |
| 59930164702 | ALBUTEROL INHALATION SOLUTION  |
| 59930150006 | ALBUTEROL SULFATE INHAL. SOL.  |
| 59930150008 | ALBUTEROL SULFATE INHAL. SOL.  |
| 59930151701 | ALBUTEROL SULFATE SOLUTION     |
| 59930151702 | ALBUTEROL SULFATE SOLUTION     |
| 59930155020 | ALBUTEROL SULFATE SOLUTION     |
| 00085113601 | INTEGRILIN                     |
| 00085117701 | INTEGRILIN                     |
| 00085117702 | INTEGRILIN                     |
| 00085123501 | INTRON A FOR INJ MULTIDOSE PEN |
| 00085124201 | INTRON A FOR INJ MULTIDOSE PEN |
| 00085125401 | INTRON A FOR INJ MULTIDOSE PEN |
| 00085116801 | INTRON A INJ 18MIU HSA FREE    |
| 00085113301 | INTRON A INJ 25MIU HSA FREE    |
| 00085118401 | INTRON A INJ 3MIU HSA FREE     |
| 00085118402 | INTRON A INJ 3MIU HSA FREE     |
| 00085119101 | INTRON A INJ 5MIU HSA FREE     |
| 00085119102 | INTRON A INJ 5MIU HSA FREE     |
| 00085117901 | INTRON A INJ PAK10MIU HSA FREE |
| 00085117902 | INTRON A INJ PAK10MIU HSA FREE |
| 00085057102 | INTRON A INJECTABLE 10MILLN IU |
| 00085057106 | INTRON A INJECTABLE 10MILLN IU |
| 00085111001 | INTRON A INJECTABLE 18MILLN IU |
| 00085028502 | INTRON A INJECTABLE 25MILLN IU |
| 00085064703 | INTRON A INJECTABLE 3MILLN IU  |
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| 59930160002 | PERPHENAZINE                   |
| 59930161001 | PERPHENAZINE 16MG              |
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| 59930160502 | PERPHENAZINE 8MG               |
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| 00085133601 | PROVENTIL INHALATION SOLUTION  |
| 00085020901 | PROVENTIL SOLUTION .083MG/ML   |
| 00085180601 | PROVENTIL SOLUTION .083MG/ML   |
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00085020852 PROVENTIL SOLUTION 5MG/ML  
00085125901 TEMODAR 100MG  
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00085124401 TEMODAR 20MG  
00085124402 TEMODAR 20MG  
00085125201 TEMODAR 250MG  
00085125202 TEMODAR 250MG  
00085124801 TEMODAR 5MG  
00085124802 TEMODAR 5MG

**CERTIFICATE OF SERVICE**

I hereby certify that I, Steve W. Berman, an attorney, caused a true and correct copy of the foregoing **[PROPOSED] CONSOLIDATED ORDER RE: MOTION FOR CLASS CERTIFICATION** to be delivered to all counsel of record by electronic service pursuant to Paragraph 11 of the Case Management Order No. 2, by sending on January 23, 2006, a copy to LexisNexis File and Serve for Posting and notification to all parties

By /s/ Steve W. Berman  
Steve W. Berman  
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